

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

TERRY A. RIGGLEMAN,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Civil Action No. 5:17-cv-00063

**MEMORANDUM IN SUPPORT OF MOTION TO QUASH
AND TO PERMIT DEPOSITION TESTIMONY TO BE USED AT TRIAL**

Non-parties VCU Health System (“VCUHS”) and Reena Cherian, N.P.’s (“Ms. Cherian”), by counsel, pursuant to Rules 32 and 45 of the Federal Rules of Civil Procedure, respectfully move the Court to quash the subpoena issued by Plaintiff Terry Riggleman (“Riggleman”) to Reena Cherian, N.P. (“Ms. Cherian”) on April 25, 2019 (“Plaintiff’s Subpoena,” attached as **Exhibit A**). Plaintiff’s Subpoena commands Ms. Cherian to appear to testify at the trial of this matter in Charlottesville, Virginia, May 14, 2019, at 9:30 a.m.

VCUHS and Ms. Cherian also move the Court to quash the subpoena issued by Defendants Harold Clarke and Mark Amonette, M.D. (“Defendants”) to Ms. Cherian on April 25, 2019 (“Defendants’ Subpoena,” attached as **Exhibit B**; Plaintiff’s Subpoena and Defendants’ Subpoena referred to collectively as the “Subpoenas”). Defendants’ Subpoena commands Ms. Cherian to appear to testify at the trial of this matter in Charlottesville, Virginia, May 13-17, 2019, at 9:30 a.m.

VCUHS and Ms. Cherian further move the Court to permit Ms. Cherian’s previously taken deposition testimony to be used at the trial of this matter, in the interest of justice and with due

regard to the importance of live testimony in open court.

LEGAL STANDARD

A party who issues a subpoena “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). The Court “must enforce this duty and impose an appropriate sanction . . . on a party who fails to comply.” Id. And a Court, “[o]n timely motion . . . must quash or modify” a subpoena that “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iv). Motions to quash filed shortly after service are usually considered “timely.” See, e.g., SmithKline Beecham Corp., 2006 WL 2246146, at *3 (M.D. Fla. Aug. 4, 2006) (finding a motion filed 15 days after service timely); Flynn v. Square One Dist., Inc., 2016 WL 2997673, at *2 (M.D. Fla. May 5, 2016) (finding motions filed before the deadline for compliance timely).

Trial courts have broad discretion to quash or modify subpoenas issued to third parties. See Singletary v. Sterling Trans. Co., Inc., 289 F.R.D. 237, 240 (E.D. Va. 2012) (citing Cook v. Howard, 2012 WL 3634451, at *6 (4th Cir. Aug. 23, 2012) (unpublished) (holding that district courts are afforded broad discretion with respect to motions to quash, and finding that the list of grounds in Rule 45 “are co-extensive with the general rules governing all discovery that are set forth in Rule 26.”)).

A party may use deposition testimony in lieu of live testimony at trial “for any purpose” if the Court finds “on motion and notice, that exceptional circumstances make it desirable – in the interest of justice and with due regard to the important of live testimony in open court – to permit the deposition to be used.” Fed. R. Civ. P. 32(a)(4)(E).

ARGUMENT

The Court should quash the Subpoenas to Ms. Cherian because compliance would unduly burden Ms. Cherian and her patients, and the burden of compliance outweighs any benefit. The Court should further permit Ms. Cherian's previous deposition testimony to be used at trial because exceptional circumstances make it desirable to permit the deposition to be used in lieu of her live appearance.

Ms. Cherian is a nurse practitioner and works in VCUHS's program with the Virginia Department of Corrections ("VDOC") for the management and treatment of inmates with chronic Hepatitis C (the "Clinic"). See Affidavit of Reena Cherian, N.P., attached as **Exhibit C**. Ms. Cherian also sees community hepatology patients. She devotes the entirety of her professional time to caring for and treating patients with liver disease and conditions. Ms. Cherian's schedule is arranged several weeks, and sometimes months, in advance. If she must attend trial to testify, she will be forced to cancel and reschedule appointments for patients who can ill afford such disruption of their treatment.

Ms. Cherian was deposed as a fact witness on February 11, 2019. The extent and nature of Ms. Cherian's knowledge is well-known to the parties, and appearing at trial to testify would impose a tremendous and unnecessary burden on her and her patients. As such, the Court should quash the Subpoenas and permit Ms. Cherian's previously obtained deposition testimony to be used rather than require her appearance at trial.

CONCLUSION

For the foregoing reasons, VCUHS and Ms. Cherian respectfully request that this Court quash the Subpoenas in their entirety, permit Ms. Cherian's deposition testimony to be used at trial, and award reasonable attorney's fees associated with this motion.

Dated: May 3, 2019

Respectfully Submitted,

VCU HEALTH SYSTEM AND REENA
CHERIAN, N.P.

/s/

Meredith M. Haynes (VSB No. 80163)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of May, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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